

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA
Richmond Division**

In Re:)	
)	
Lewis E. Wilkerson, Jr.,)	
)	
Debtor)	
)	
ROBERT E. DIXON,)	Case Number: 20-34576-KLP
Individually and Derivatively on behalf of)	
D.E.R. LLC)	Ch. 11
)	
Plaintiff)	
v.)	
)	Adversary Proceeding
LEWIS E. WILKERSON, JR.)	
)	No. 21-03008 - KLP
Defendant.)	
_____)	

**MOTION *IN LIMINE* TO EXCLUDE PLAINTIFF’S REBUTTAL EXPERT DISCLOSURE
REPORT AND TESTIMONY FROM PLAINTIFF’S REBUTTAL EXPERT
RELYING ON THE DISCLOSURE REPORT**

Comes now the defendant, Lewis Wilkerson (“Defendant”), by counsel, and for his *Motion In Limine* to Exclude Plaintiff’s Rebuttal Expert Disclosure Report and Testimony from Plaintiff’s Rebuttal Expert Relying on the Disclosure Report respectfully represents as follows:

Tanya Futtrell, CPA was hired by Plaintiff as a rebuttal expert. As such, Ms. Futtrell prepared an expert disclosure under B.R.C.P. 7026 and F.R.C.P. 26(a)(2)(B) that was filed as Document 12 (the “Report”).

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Counsel for Defendant

ARGUMENT

I. The Report does not conform to B.R.C.P. 7026 and F.R.C.P. 26(a)(2)(B).

F.R.C.P. Rule 26 requires a party to provide opposing counsel a written report prepared by an expert witness who may testify at trial. Bresler v. Wilmington Trust Co., 855 F.3d 178, 189 (4th Cir. 2017). The Report must contain "a complete statement of all opinions the [expert] witness will express and the basis and reasons for them," "the facts or data considered by the witness in forming them," and "any exhibits that will be used to summarize or support them." Id. (quoting Fed. R. Civ. P. 26(a)(2)(B)(i)-(iii)). The underlying purpose of F.R.C.P. 26 is to allow parties "to adequately prepare their cases for trial and to avoid unfair surprise." Id. (quoting Russell v. Absolute Collection Servs., Inc., 763 F.3d 385, 396 (4th Cir. 2014)). "Accordingly, a party who fails to comply with the expert witness disclosure rules is prohibited from 'us[ing] that information or witness to supply evidence ... at a trial, unless the failure was substantially justified or is harmless.' Fed. R. Civ. P. 37(c)(1)." Id.

The Report is conclusory and does not fulfill the requirements of B.R.C.P. 7026; F.R.C.P. 26(a)(2)(B)(i); F.R.C.P. 26(a)(2)(B)(ii) or F.R.C.P. 26(a)(2)(B)(iii). The Report does not contain the basis and reason for Ms. Futrell's opinions, only conclusions. The Report does not contain the Exhibits that will be used to summarize or support Ms. Futrell's conclusory opinions. Documents and evidence containing the facts and data considered by Ms. Futrell when preparing the Report and/or formulating her conclusory opinions were not proposed as Exhibits.

Copies of Plaintiff's Proposed Exhibits were made available to Defendant's counsel one (1) day before objections were due. It was only then determined the Report Exhibits were missing, prejudicing Counsel's ability to prepare for a hearing on this matter.

The Report is substantially and materially incomplete, was not supplemented, does not include exhibits, and does not adequately explain the basis of the rebuttal expert's opinion and should be excluded.

II. Plaintiff's rebuttal expert witness should be precluded from offering testimony based on the Report.

Because the Report is insufficient and should be excluded, Ms. Futrell's testimony derived from or referencing the Report should also be excluded.

CONCLUSION

Defendant requests the Court exclude the Report and exclude Testimony based on or relying on the Report.

By: /s/ Robert A. Canfield
Counsel

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CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of October, 2021, a copy of the *foregoing Motion in Limine to Exclude Plaintiff's Rebuttal Expert Disclosure Report and Testimony From Plaintiff's Rebuttal Expert Relying on the Disclosure Report* was hand delivered to: W. R. Baldwin, III, Esq., Meyer Baldwin, Long & Moore, LLP, 5600 Grove Avenue, Richmond, VA 23226.

/s/ Robert A. Canfield
Robert A. Canfield